

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150534
	:	TRIAL NO. B-1205436
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DENNIS C. ALSIP, JR.,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Dennis C. Alsip, Jr., appeals from the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Withdraw Guilty Plea [and] Motion to Reconsider [Appeals] Court’s 2013 Denial of Same Filed by Counsel * * *.” We affirm the court’s judgment.

Alsip was convicted on August 12, 2013, upon his no-contest plea to aggravated vehicular homicide. He did not appeal his conviction. He instead challenged his conviction by filing with the common pleas court two Crim.R. 32.1 motions. Retained counsel filed the first motion on August 16, 2013, and Alsip filed the second motion on August 6, 2015. Each motion sought to withdraw Alsip’s no-contest plea on the ground that the plea had been the involuntary, unknowing, and unintelligent product of his trial counsel’s ineffectiveness. *See State v. Alsip*, 1st Dist. Hamilton No. C-130699, 2014-Ohio-4180. In this appeal, he presents a single assignment of error challenging the overruling of his 2015 motion.

We note that Alsip's 2015 motion ostensibly sought "reconsider[ation]" of this court's 2014 decision affirming the overruling of his 2013 motion. App.R. 26(A) permits "reconsideration of any cause or motion submitted on appeal" and requires that the application for reconsideration be "considered by the [appeals court] panel that issued the original decision." App.R. 26(A)(1)(a) and (c). The rule does not, as Alsip would have it, authorize a common pleas court to "reconsider" a decision of an intermediate appellate court. See *Johnson v. Microsoft Corp.*, 156 Ohio App.3d 249, 2004-Ohio-761, 805 N.E.2d 179, ¶ 11 (1st Dist.) (following *Rodriguez de Quijas v. Shearson/Am. Exp. Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989), to hold that an inferior court must follow the controlling authority of a higher court, leaving to the higher court the prerogative of overruling its own decision). Therefore, the common pleas court properly denied Alsip relief on that basis.

We further note that the record on appeal does not include a certified, bound, file-stamped copy of a transcript of the proceedings at Alsip's plea hearing. The appellant has the obligation to order and to file with the clerk of the trial court a certified copy of the transcript of "the proceedings the appellant considers necessary for inclusion in the record [on appeal], * * * in a form that meets the specifications of App.R. 9(B)(6)." See App.R. 9(A)(1), 9(B)(1), 9(B)(3), 9(B)(6)(b) and (j), and 9(B)(7). An indigent offender is entitled to a transcript of the proceedings leading to his conviction if he has pending either a direct appeal or a postconviction proceeding. *State ex rel. Partee v. McMahon*, 175 Ohio St. 243, 248, 193 N.E.2d 266 (1963); *State v. Hawkins*, 1st Dist. Hamilton No. C-74425, 1975 WL 181869 (July 7, 1975). But Alsip did not appeal his conviction. And in advancing his postconviction Crim.R. 32.1 motions, he did not meet his App.R. 9 obligation to ensure that the record on appeal

included the plea-hearing transcript necessary to our review of the common pleas court's decision overruling his motions to withdraw that plea.

The common pleas court's decision overruling Alsip's motion to withdraw his no-contest plea was discretionary. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813. And Alsip bore the burden of demonstrating that withdrawing his plea was necessary "to correct manifest injustice." Crim.R. 32.1; *Smith* at paragraph one of the syllabus. Thus, implicit in the common pleas court's decision overruling Alsip's motion was its determination that he had failed to sustain that burden. And that determination, in the absence of a transcript of the plea hearing, cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an "abuse of discretion"). Therefore, the court did not abuse its discretion in overruling the motion.

Accordingly, we overrule the assignment of error and affirm the judgment of the common pleas court.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on April 26, 2017
per order of the court _____.
Presiding Judge